

## **REMARKS/ARGUMENTS**

### **1. Summary of the Office Action**

Claims 1-21 stand rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter.

Claims 11-12, 18-21, 26, and 27 stand rejected under 35 U.S.C. § 112 as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which the application regards as the invention.

Claims 1, 4, and 22-25 stand rejected under § 102(b) as allegedly being anticipated by U.S. patent no. 5,895,453 (hereinafter “Cook”).

Claims 2-17 stand rejected under § 103(a) as allegedly being obvious and unpatentable over Cook in view of U.S. patent no. 6,360,211 (hereinafter “Anderson”).

Although claims 22, 24, and 25 were listed under § 103(a) rejections, it is assumed by the Examiner’s comments stating the claims have been analyzed according to respective claims from the § 102(b) analysis that claims 22, 24, and 25 are also allegedly rejected under § 102(b).

### **2. Response to § 101 Rejection**

Claims 1-21 stand rejected as allegedly being directed to non-statutory subject matter, specifically, not falling within the Technological arts.

Claim 1 as presently amended obviates the rejection based upon the claim being directed toward a human making mental computations. Claim 1 recites monitoring irregular activity in a network-based transaction facility and further includes receiving item data corresponding to completed transactions on the network-based transaction facility, the item data including multiple

items, each having a price-based value, processing the item data at a server communicatively coupled to the network-based transaction facility to identify at least one of the multiple items as being an irregular item based on the price-based value for the irregular item falling outside a range defined by at least one threshold price-based value.

Because claim 1 has been amended to reflect processing item data on a server, the claim falls within a Technological art. Therefore, it is respectfully requested this rejection be removed from the claim 1 and the dependent claims therefrom.

For at least the reasons above, Applicants believe all rejections have been addressed and respectfully request the withdrawal of the § 101 rejections.

### **3. Response to § 112 Rejection**

It should be noted that the operative standard for determining whether the definiteness requirement of the relevant statute has been met is “whether those skilled in the art would understand what is claimed when the claim is read in the light of the specification.” The Beachcombers Intn’l, inc. v Wilde Wood creative products, Inc., 31 USPQ 2d 1653, 1656 (Fed. Cir. 1994) (citing Orthokinetics, Inc. v Safety Travel Chairs, Inc., 806 F.2d, 1565, 1 USPQ 2d 1081, 1088 (Fed. Cir. 1986)).

Claims 11-12, 18-21, 26, and 27 stand rejected under 35 U.S.C. § 112 as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which the application regards as the invention. Claims 12 and 26 have been cancelled.

Claim 11 has been amended to recite after receiving the item data corresponding to multiple items, converting the price-based values of the multiple items from a first currency to a second currency, wherein the second currency is the threshold price-based value currency. As amended, this step has a use of converting to second currency after the receiving such that the

processing step may be performed in the case of multiple items being a different currency to that of the threshold value.

Because claim 1 had been amended to recite monitoring irregular activity in a network-based transaction facility and processing item data at a server communicatively coupled to the network-based transaction facility to identify at least one of the multiple items as being an irregular item based on the price-based value for the irregular item falling outside a range defined by at least one threshold price-based value, claims 18-21 now have a clear relationship to claim 1 and specifically points out and distinctly claims subject matter regarded as the invention.

Claim 27 now recites the database further includes a first look-up table to store currency conversion rates and a second look-up table to store threshold price-based values based on auction categories, the currency conversion rates used by the database engine server to convert the price-based value of each of the multiple items from a first currency to a second currency, wherein the second currency is the threshold price-based value currency. As amended, claim 27 now functionally relates to claim 24 from which it depends and therefore is no longer unclear and indefinite.

For at least the reasons above, Applicants believe all rejections have been addressed and respectfully request the withdrawal of the § 112 rejections.

#### **4. Response to § 102 Rejections**

Applicants respectfully traverse this rejection for the reasons set out below, and ask the Examiner for reconsideration.

To anticipate a claim, the reference must teach every element of the claim. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or

inherently described, in a single prior art reference.” Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

**a. COOK DOES NOT TEACH EVERY ELEMENT OF CLAIM 1**

Claim 1, as amended,] includes the following limitations:

A method of monitoring irregular activity in a network-based transaction facility, the method including:

receiving item data corresponding to completed transactions on the network-based transaction facility, the item data including a price-based value for each of the multiple items;

processing the item data at a server communicatively coupled to the network-based transaction facility to identify at least one of the multiple items as being an irregular item based on the price-based value for the irregular item falling outside a range defined by at least one threshold price-based value; and

generating a report including filtered data by removing irregular item data corresponding to at least one irregular item identified from the received item data.  
(emphasis added)

Cook teaches a method and system for identifying suspect transactions made by employees by analyzing transactional data, specifically, polled data received from stores, such as retail stores that employ sales personnel operating retail cash registers. In fact, Cook discloses that the invention must receive complete, accurate data from the client tagged to locations and personnel in order to link the resultant records produced to the likely suspect locations and personnel who may be involved in a theft or other improper misappropriating conduct (Column 4, Lines 49-56). In other words, a resulting report is generated by data acquired from physical locations and associated personnel for the purpose of discovering wrongdoings by employees. In

contrast, claim 1 recites receiving item data corresponding to completed transactions on the network-based transaction facility, the item data including a price-based value for each of the multiple items. The data discussed in Cook is not item data corresponding to multiple items listed on the network-based transaction system, it is data regarding recorded sales transactions at a store involving an employee.

Cook also does not discuss item data including a price-based value for each of the multiple items or processing the item data at a server to identify at least one of the multiple items as being an irregular item based on the price-based value for the irregular item falling outside a range defined by at least one threshold price-based value. Cook's data may have a value associated with it, but it is not a price-based associated with each of the multiple items. Instead, Cook's values are sales transaction values matched against totals, such as register totals, return totals, or credit card totals. Although Cook may incorporate a threshold type algorithm to determine when a transaction value is suspect, it is clearly not identifying at least one of the multiple items as being an irregular item based on the price-based value for the irregular item falling outside a range defined by at least one threshold price-based value, as recited in claim 1.

Cook does not discuss generating a report including filtered data by removing irregular item data corresponding to at least one irregular item identified from the received item data. If Cook generates a report at all, it is a report of the suspect transactions involving personnel and not a report where the irregular item data is removed.

As a dependent claim is deemed to include the limitations of a claim from which it depends, the arguments presented above also address the rejections against the dependent claims. Accordingly, the rejections against the dependent claims have been addressed, and withdrawal of these rejections is respectfully requested.

Because independent claims 22, 23 and 24 have substantially similar limitations as claim 1, the same arguments that applied to claim 1 also apply to these claims and their associated dependent claims.

**5. Response to § 103 Rejections**

Applicants respectfully traverse this rejection for the reasons set out below, and ask the Examiner for reconsideration.

To establish a **prima facie** case of **obviousness**, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

**THE PRIOR ART REFERENCES DO NOT TEACH OR SUGGEST ALL CLAIM LIMITATIONS, WHEN CONSIDERED SINGULARLY OR IN COMBINATION.**

The teachings of Anderson fail to cure the deficiencies of Cook. Subsequently, their combination also fails to render the present claims as amended obvious. Anderson discusses processing invoice information by automatically conducting a reasonability test on the invoice based on customer specific categories and associated criteria. Upon evaluation, the criteria can be flagged green, yellow, or red indicating a corresponding course of action should be taken. Once the flag or flags are set, the system generates a report. The report as shown in Table 4 merely lists the category, criterion, flag, corresponding action required, recipient and originator.

Anderson does not discuss receivng item data corresponding to completed transactions on the network-based transaction facility, the item data including a price-based value for each of the multiple items. As discussed above, Cook discloses sales transaction data and Anderson discusses checking the total amount of the invoice without regard to the itemized totals within the invoice. In other words, neither discusses item data including a price-based value for each of the multiple items.

Anderson also does not discuss processing the item data at a server communicatively coupled to the network-based transaction facility to identify at least one of the multiple items as being an irregular item based on the price-based value for the irregular item falling outside a range defined by at least one threshold price-based value. Anderson is limited to invoice totals falling outside a range, wherein the invoices are comprised of a list of items, and does not include identifying at least one of the multiple items as being an irregular item.

Further, Anderson does not discuss generating a report including filtered data by removing irregular item data corresponding to at least one irregular item identified from the received item data. Again, Anderson deals with invoice totals and flagging invoices, not item data corresponding to multiple items listed on the network-based transaction system, the item data including a price-based value for each of the multiple items.

In light of the above, Applicant(s) respectfully submit(s) that the rejection under 35 U.S.C. § 103 has been overcome, and withdrawal of this rejection is therefore respectfully requested.

6. **Conclusion**

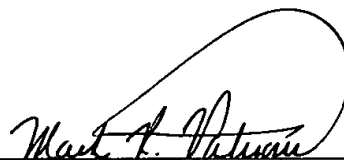
In summary, Applicants assert that all rejections against the currently pending claims have been addressed and withdrawal of these rejections is respectfully requested. Further, Applicants believe that the claims to be in a condition for allowance, which is earnestly solicited.

If there are any additional charges, please charge Deposit Account No. 02-2666. If a telephone interview would in any way expedite the prosecution of the present application, the Examiner is invited to contact André Marais at (408) 947-8200 ext. 204.

Respectfully submitted,

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